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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 587

ADDISON E. McCOY AND SARA S. McCOY,
Petitioners,

vs.

HOLLY HILL LUMBER COMPANY, INC.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF SOUTH CAROLINA AND BRIEF IN SUPPORT OF PETITION.

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Addison E. McCoy.

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No. 587

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vs.

HOLLY HILL LUMBER COMPANY, INC.

PETITION FOR WRIT OF CERTIORARI TO SUPREME COURT OF SOUTH CAROLINA

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

Your Petitioners, Addison E. McCoy and Sara S. McCoy, respectfully present to this Court their petition for a writ of certiorari addressed to the Supreme Court of the State of South Carolina, commanding said court and the clerk thereof to certify to this Court the record and proceedings of the case in said court wherein your petitioners were appellants and the Holly Hill Lumber Company, Inc., a corporation under the laws of the State of South Carolina, was respondent, together with its opinions therein, for the review and determination of said cause by this Court.

Summary and Statement of Matter Involved

The case involves the question as to whether there should be specific performance of an option procured by the plaintiff corporation for $10.00 from the defendant Addison E. McCoy to purchase a tract of 560 acres in Orangeburg County, South Carolina, at an agreed purchase price of $10,000.00.

The defendant Addison E. McCoy admits the execution and delivery of the option, but defended upon several grounds, mainly that the option was obtained through the fraud and misrepresentation of the plaintiff, and that the purchase price is so grossly inadequate as to render the contract unconscionable. The gist of the defense is that there is a large and valuable limestone or marl deposit on the tract of land in question which lies from six to fifteen feet beneath the surface; that the defendant, who lives about thirty five miles away from the property, was ignorant of this fact when the option was given; that the plaintiff was fully apprized of the existence of the lime bed; and not only concealed this knowledge from the defendant, but made false representations thereabout which in effect lulled him to sleep.

In its first decision the State Supreme Court held against the petitioner, Addison E. McCoy's, contention of fraud. The Court, however, recognized the basic principle of one of the other defenses—that a Court of Equity should not and will not enforce specific performance of an unconscionable bargain; but avoided its enforcement by asserting that the property was not worth more than the $10,000.00 offered for it; and while affirming, destroyed the finality of this first decision by stating in its rejection of the defendant's suggestion that the dower interest of the defendant's wife would be outstanding, and he unable to give the good and marketable title which he contracted to give, that they

would not attempt to meet a situation which was not then before them; that there was then no evidence that the wife would refuse to renounce dower; and that if such situation should develop, the parties would doubtless seek an appropriate remedy in the lower Court. It did develop and a remedy was sought by the plaintiff which brought on the second appeal by the husband, Addison E. McCoy. The wife, Sara S. McCoy, was not a party to the contract, did not execute same; and, on the contrary, refused to renounce her dower right under the circumstances present of fraud, over-reaching, deceit, and effort by plaintiff to enforce a totally unconscionable and inequitable bargain it had procured because of the ignorance of her husband about the limestone deposit. His second appeal resulted in a remand to the Circuit Court for further proceedings, among which was to bring in the wife, Sara, as a party to case, in which she had not theretofore participated. Upon this being done, the Circuit and Supreme Courts barred and divested her of her dower, without her signature or consent, and over protest, in violation of all modes of barring dower provided by statute or otherwise in South Carolina; and, we believe, without precedent. This was strenuously resisted as a violation of her right to due process of law and the equal protection of the laws under the Constitution of the United States. Meanwhile, other Federal constitutional questions had been duly raised on the record by both of these petitioners, and were decided adversely to them by the Court of last resort in the State. It is upon the basis of these questions that this petition is presented.

Jurisdictional Statement

The Grounds upon which it is contended that this honorable Court has jurisdiction of this case will be amplified in the subjoined brief, replete with authorities, reference

to which is craved; but here will be outlined in condensed form. It is respectfully submitted that the Court of last resort in the State of South Carolina has decided Federal questions of substance not heretofore determined by this Court, or has decided them in a way probably not in accord with applicable decisions of this Court, to wit: Under the U. S. Constitution we challenge the right and power of the Court to vest, as they have done in this case, the dower right of the wife without her signature or consent in the purchaser of real estate from the husband by mere judicial decree, in violation of the statutory and common law rules that her dower can *only* be divested by her voluntary renunciation before, and after private and separate examination by an officer competent to administer an oath, to determine whether her renunciation has been given "freely, voluntarily and without any compulsion, fear or dread of any person whomsoever". See statutes cited and quoted in the subjoined brief. The question of due process of law is directly involved; and presents a matter of public importance.

A rigid line of cases had theretofore consistently held that dower can *only* be renounced in the manner provided by statute.

Ex parte Clark, 130 S. C. 501, 126 S. E. 137.
Gainey v. *Anderson*, 87 S. C. 47, 68 S. E. 888.
Moon v. *Bruce*, 63 S. C. 126, 40 S. E. 1030.
McKenzie v. *Sifford*, 52 S. C. 104, 29 S. E. 388.

The authorities cited in the subjoined brief will unquestionably show that no case has been specified by the Court or Counsel which has forced a wife to *involuntarily relinquish* her dower right; and that in all of the reported cases in South Carolina and elsewhere the question has been whether there should be an abatement from the purchase price of the value of the wife's dower interest if she refuses to relinquish

her right, or an indemnity against it; and some have gone to the exact opposite of what was done in this case by holding that the wife's refusal defeats the action for specific performance altogether; as, for example, the leading decision by the Court of Appeals of the District of Columbia in the case of *Reilly* v. *Cullinane*, 287 Fed. 994.

We respectfully submit that a substantial Federal question is presented by this matter, based on the following propositions, to wit:—

(a) Mrs. McCoy having never signed the contract, and having refused to give her consent to the relinquishment of her dower, is suffering a taking of her private property without her consent for private use. That this is a denial to her of due process of law under the Federal Constitution, see 12 C. J. 1252, sec. 1042, and what this honorable Court has said in *Holden* v. *Hardy*, 169 U. S. 366, 391, 42 L. Ed. 780, 790, 18 S. Ct. 383, to the effect that "due process of law" implies a conformity with natural and inherent principles of justice, and forbids that one person's property shall be taken for the benefit of another."

(b) This has been a taking of one person's property and giving it to a corporation, "contrary to settled usages and modes of procedure." Compare 16 C. J. S. 1375, sec. 647 and *Ochoa* v. *Hernandez Y. Morales*, 230 U. S. 139, 161, 57 L. Ed. 1427, 1437, 33 S. Ct. 1033.

And the fact that Mrs. McCoy was brought into Court and given an opportunity to be heard, does not satisfy the requirements of "due process of law."

Chicago, B. & Q. R. v. *Chicago*, 166 U. S. 226, 234, 235, 41 L. Ed. 979, 984, 17 S. Ct. 581; and *Fayerweather* v. *Ritch*, 195 U. S. 276, 297, 49 L. Ed. 193, 209, 25 S. Ct. 58; from which decisions we will quote in the brief.

It will be shown by competent authority in the subjoined brief that the State Court may not through judicial

decrees violate the due process and equal protection of the laws clauses of the 14th Amendment to the United States Constitution; that inchoate dower can not be divested by a judicial sale or decree, except to satisfy a lien which existed before the dower attached; that the United States Supreme Court has held that a gross sum in lieu of dower can not be allowed by a court of chancery, unless by consent; that it is a valuable interest that the wife can not be compelled to resign; and that the Courts of South Carolina have distinctly held that inchoate dower is a substantial right of property, recognized by the statutes and common law of South Carolina.

A Statute attempting to divest dower and substitute money or security has been held unconstitutional. *Talbot* v. *Talbot*, 14 R. I. 57. Other cases have held it to be within the protection of the constitution. (*Wheeler* v. *Kirtland*, 27 N. J. Eq. 534.)

We respectfully dissent from the statement in the last opinion of the Supreme Court that Courts have been divesting the dower interests of married women for many a day in order to compel the specific performance of the contracts of husbands. No case that we have found has done that prior to this one. Abatements of the purchase price, or securing a part of the purchase money as an idemnity against the dower are all that the references to A. L. R. cited by the Court support. The authorities show that money can not be substituted for the dower *in kind*, hence the Court is wrong in its idea that the dower is transferred from the real estate to the fund.

Your petitioners would also further show that the State Courts (including that of last resort), although divesting her of her dower right because of a contract alleged to have been made by her husband, to which she was not a party, have expressly denied her the right to show that

such contract was procured by fraud—this being another basis upon which it is claimed that she has been deprived of her property without due process of law and in denial of the equal protection of the laws. In her answer Mrs. McCoy pleaded fraud in the procurement by the plaintiff of the contract (R. 14). Plaintiff demurred to it (R. 15). The Circuit Court sustained this demurrer and struck out this plea (R. 18). She resisted this on the ground that it violated her Federal Constitutional right to due process and the equal protection of the laws under the 14th Amendment. See Exception 2 on 3rd Appeal (R. 169), and the statement on page 168 that each and every point made by the Exceptions was made and fully argued in the Court below. The order sustaining the demurrer was upheld on appeal (R. 423), the Court making it clear, however, that all constitutional questions are sufficiently in the record. It seems obvious that this action on the part of the State Courts is not in accord with the applicable decisions of this Court in numerous cases holding "that no one shall be condemned in his person or property without an opportunity of being heard in his own defense," such as *Holden* v. *Hardy,* 169 U. S. 366, 391, 42 L. Ed. 780, 790, 18 S. Ct. 383; and *Ochoa* v. *Hernandez Y. Morales,* 230 U. S. 139, 161, 57 L. Ed. 1427, 1437, 33 S. Ct. 1033.

In South Carolina under its constitution a married woman is separate and distinct from her husband in legal rights, and has a separate estate. Her dower right is held to be independent of the husband *and is against him.* Authorities in subjoined brief.

In its second decision, (R. 411) the State Supreme Court indicated that it would be necessary to try the matter of the value of the limestone deposit, not only for the sake of determining the value of the dower in relation to Mrs. McCoy, but on the fundamental issue as to whether the

alleged contract was enforcible against the husband, Addison E. McCoy. The Court said in part, apparently without consistency with its first decision:

> "The determination of the value of the property in question is an issue foreign to any of the issues heretofore disposed of, and such determination must be reached through the judicial processes that are encompassed within the common law and constitutional doctrine of due process of law."
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> "We recognize that the suggested procedure (of bringing the wife into the cause) will prolong this litigation, *and perhaps give rise to an opportunity to defeat the decree of specific performance by establishing a value for the property in question which might give the inchoate right of dower a value so far in excess of the proportionate part of the contract price as to deprive the respondent of the benefit of its contract.*" (Emphasis added)

Clearly what was meant was that if, as the Appellant Addison E. McCoy contended and argued, the value of the property was shown to be for example $60,000.00 and the rule of valuing the dower was 1/6, then the 1/6 would be $10,000.00; and, to set aside that much to protect against the dower would absorb the entire contract price and defeat the entire contract. Certainly, Addison E. McCoy had an interest in establishing that; and, was, therefore, entitled to a further status as a litigant.

The Court moreover, having cited two conflicting rules in South Carolina for evaluating the dower, and having said that they do not purport to lay down any definite rule by which the valuation shall be reached, reinforces the conclusion that Addison E. McCoy was to have a further status as a litigant with the following pronouncement:—

> "If in the further stages of the controversy, there can be evolved a method of computation that can be

shown to be more equitable in the light of the particular facts of this case than either of the rules hereinbefore referred to, the case is open for further consideration of that particular problem. *In such further consideration, the appellant* (Addison E. McCoy), *the respondent* (Holly Hill Lumber Co., Inc.) *and the appellant's wife each will be entitled to be fully heard.*" (Emphasis added)

A method not only more equitable, but more logical, and, if it had had the sanction of the Courts, more *legal,* was evolved and argued, to wit: that the dower was to be valued by the mortuary tables and valuation of an interest in property at less than an estate in fee, as enacted into law by the Legislature of South Carolina, with the result that in this case this particular dower should have been valued at one-fourth, instead of the one-sixth adopted by the court from some obsolete cases. But Addison E. McCoy was ruled out as a litigant by the Order of his honor, Judge Gaston of the Circuit Court, dated October 4, 1943 (R. 16). *This action was taken without any previous notice of it.* The matter was up before his Honor on motions for an Order of Reference and to frame issues to a jury. It was duly resisted on Federal constitutional grounds as the Order itself shows. These grounds were also raised by the 3rd Exception on the 3rd appeal to the State Supreme Court and were duly argued; but overruled.

After the Circuit Court had so deprived Addison E. McCoy of any rights as a litigant and had striken out on demurrer, the plea of his wife, Sara S. McCoy, of fraud on her rights, the case was tried once more on Circuit. This time, as the "Final Order" of his Honor, Judge Gaston of the Circuit Court plainly shows, between the evidence offered by plaintiff and defendant, respectively, the issue was marked and definite. There was no middle ground under the evidence (R. 32). The subject of dispute was an unde-

veloped limestone bed, lying beneath the surface of the earth. The plaintiff sought to show its value by the testimony of inexperts, mostly farmers, with knowledge only of the surface uses of the property, for agriculture, timber purposes and the like. This line of evidence was strenuously objected to as incompetent; because the valuation of a limestone deposit below the surface of the earth was solely a matter of scientific knowledge, or experience in the limestone industry; it being submitted that the only competent evidence admissible was such as that on which the defendants relied. Mrs. McCoy offered men learned about the subject and distinguished in that field of scientific activity, such as Dr. F. H. H. Calhoun, Dean of Geology at Clemson College, S. C., Ellis C. Soper, a mining engineer of international distinction, one time connected with the Edison Cement Company associated with the great inventor, Thomas A. Edison; Roy Reddie, a practical mining engineer of international activities, now operating a large Limestone Quarry at Gaffney, S. C., and Prof. J. Lincoln Moore, Chemical Engineer and prospector for the South Carolina State Defense Council. The Supreme Court says that the opinions of these men on the value of this property ran to $100,000.00 and more. Mr. Soper, for example, gave it an *annual* royalty value of from $15,000.00 to $18,000.00. Engineer Reddie said the McCoy property would be a gift at $200.00 per acre (R. 124, f. 479). The trial judge referred laudably to this witness in his Order (R. 28, f. 96). He credits him with being a mining engineer of world wide experience and qualifications; and said that Mr. Reddie on a royalty basis esimates the McCoy land at 3 cents per ton, or $2,400.00 per acre (R. 29, f. 98). Yet the same trial judge disregards entirely all of this evidence and abruptly, and without any apparent reason, holds that in his opinion the fair market value of the McCoy land

in 1941 is $10,000.00 under the testimony (R. 43, f. 155)! The State Supreme Court apparently decides this important issue with the following fiat:

> "Considering the whole of it, this Court is satisfied that the long-experienced trial Judge reached a just and equitable decision when he fixed the value of the property at the time of sale at $10,000.00, and it will be affirmed" (R. 427).

It discounts a binding written offer appearing in the record at pages 187 to 189, incl., by the President of the Volunteer Portland Cement Company of Knoxville, Tenn., to purchase the identical property for $25,000.00.

The action of the Court in not being controlled by the scientific evidence seems to us to be not in accord with such applicable decisions of this Court as *Montana Ry. Co.* v. *Warren,* 137 U. S. 348, 34 L. ed. 681, 11 S. Ct. 96.

Even if it be said that these holdings of value and utter disregard of the only evidence to which weight should have been given on that issue are non-Federal grounds of decision, they are so utterly without any fair or substantial support in authority or reason and so plainly untenable that they can not serve to prevent review by this Court, there being other admittedly Federal grounds involved.

Ward v. *Love County,* 253 U. S. 17, 40 Sup. Ct. 419, 64 L. ed. 751, 758;

Creswill v. *Grand Lodge K. of P.,* 225 U. S. 246, 261, 50 L. ed. 1074, 1080, 32 S. Ct. 822;

Terre Haute and I. R. Co. v. *Indiana,* 194 U. S. 579, 589, 48 L. ed. 1124, 1129, 24 S. Ct. 767.

There are also other substantial Federal questions in this case, as to which the review and adjudication of this honorable Court is sought. One of these is that the Circuit Court, with the concurrence of the Supreme Court of the

State has by decree ordained a mechanism for debarring Mrs. McCoy's dower that violates her husband's Federal constitutional rights, as we conceive them. It was decreed that the portion of the purchase money that was to be withheld against the dower was to be secured by a mortgage carrying a clause as follows:

> "And Further, that in the event the said wife survives the Defendant, the Plaintiff will, upon death of Defendant, pay the said sum to his wife with any accrued interest." (R. 215).

Unless the dower can be barred outright by the plaintiff paying the whole sum into Court as it is now apparently attempting to do (R. 419), but which we contend is not constitutionally possible, some device of mortgage like this would have to be resorted to; but, in this form, as contended throughout by the separate Counsel for the husband (R., pp. 223, 224) *his* constitutional rights are thereby violated. This is obvious because the money would not belong to her, but, after his death, to *his* estate on account of the liability of the latter under the general warranty of the deed involved (R. 223). Principles of subrogation would come into play; for if she may recover the dower in kind, the Lumber Company would have its remedy under the general warranty; and the estate of the husband would have to answer on that; entitling it by the equitable principles of subrogation to the withheld and secured money, since she will have her dower in land and can not have both the land and the money.

Under Article 17, Section 9 of the Constitution of South Carolina, 1895, a married woman enjoys a separate estate from her husband; hence the fact of marriage can not bear upon these respective rights and liabilities. To take the money, which is the property of *his* estate, and thus give

it to her, deprives him of his property without due process of law. This has been contended throughout the case.

Again, we respectfully present to this honorable Court a substantial violation of Addison E. McCoy's Federal constitutional rights, and a taking of his property without due process of law in violation of the Fourteenth Amendment, in the fact that the State Supreme Court has never passed upon certain vital points of his defense which were duly presented to them, and which by the express terms of the Constitution and laws of the State of South Carolina, they were required to decide.

In the subjoined brief we will cite and quote from the constitution and statute of South Carolina and decisions of this Court (e. g. *Fayerweather* v. *Ritch*, 195 U. S. 276, 49 L. ed. 193, 25 S. Ct. 58) and other Courts to show that this was and is a denial of due process of law as guaranteed by the 14th Amendment of the United States Constitution.

There were several points so raised by your petitioner and argued by his Counsel, but passed over by the Court; their omission being in each case brought to their attention by proper exception thereafter; but we will trouble this honorable Court with only one of them, because it bears on the vital question of fraud.

The Honorable Supreme Court of South Carolina did not decide the point raised by the fourth exception on the first appeal thereto, that the main basis upon which fraud was claimed by the defendant was that

> "The plaintiff in procuring the option represented to the defendant that 'elbow room' was wanted, inducing the defendant to believe that it was expanding plaintiff's large saw mill operation adjoining defendant's place, and beclouding and concealing from him the vital fact of the presence under the surface of the property of a large and highly valuable deposit of limestone or marl," etc.

The following is the nearest approximation of the Court to the point in issue. We quote from the opinion (23 S. E. (2nd) 378, Headnotes 9 and 10):

> "While the rules of equity which we have hereinabove stated, as they relate to fraud and concealment on the part of a vendee, are generally recognized and accepted by the Courts, it is agreed that an informed vendee must limit himself to silence in order to escape the imputation of fraud. If in addition to the party's silence there is any statement, even in word or act on his part, which tends affirmatively to a suppression of the truth, or to a withdrawal or distraction of the other party's attention or observation from the real facts, the line is overstepped, and the concealment becomes fraudulent.
>
> "It is upon the foregoing principle of equity that the defendant largely relies, and he points to the following testimony as being conclusive to show fraud. When the defendant, Mr. McCoy, was being cross-examined, this testimony was elicited:
>
> " 'Q. Counsel asked Mr. Miller if he did not tell you when he was trying to get the option, if he told you it (Atlantic Lime Corporation) was in the hands of the receivership?
>
> " 'A. Yes. I asked him "How about that lime plant?" He said, "Don't think it will amount to anything, it is in the hands of the receiver." I had a vague idea about the lime plant.'
>
> "It is argued that this testimony shows that Mr. Miller overstepped the line, affirmatively suppressed the truth, and was guilty of concealment amounting to fraud. But this deduction escapes us."

No wonder the deduction escaped; because there was no exception that hinged the charge of fraud upon the conversation about the lime plant. That was a mere incidental and secondary matter. The fourth exception on the first appeal (R. 157) had no reference whatever to the Atlantic

Lime Corporation or its receivership; but charged error in failing to find fraud, concealment of essential facts and over-reaching on the part of the plaintiff in obtaining the option; "because the undisputed evidence shows that plaintiff in procuring the option represented to the defendant that 'elbow room' was wanted, inducing the defendant to believe that it was for expanding plaintiff's large sawmill operation adjoining defendant's place, and beclouding and concealing from him the vital fact of the presence under the property of a large and highly valuable deposit of limestone or marl, which was further concealed by failing to mention it, or the right to prospect for it on the place, in the option form prepared in advance by plaintiff, although the plaintiff soon thereafter surreptitiously trespassed on defendant's said property and bored for lime; all of which induced the defendant to give plaintiff the option at the grossly inadequate price of $17.85 per acre; although it is indisputably shown that plaintiff had advance knowledge of the existence of large lime deposits there and thereabouts and of the activities of the State Council of Defense in prospecting and procuring in that area options for lime purposes ranging from $50.00 to $400.00 per acre; and, as all this was unknown to defendant, the statements made by plaintiff had the effect in law and equity of creating a duty on the plaintiff of making a full disclosure of the facts, which were withheld in the knowledge that if revealed the option would not have been given."

We shall in the brief subjoined to this petition show by reason and authority that the facts from which the above outline was condensed constitute in law and in equity such a fraudulent status as to have defeated plaintiff's demand for specific performance. The Court, instead, hinged its position on a mere incidental conversation about the Atlantic Lime Corporation which was not touched on in the defendant's exception as to fraud. This omission of a tre-

mendously important issue can amount to nothing less than a deprivation to this defendant of his Federal constitutional right to "due process of law", without which his property can not lawfully be taken from him.

The values of this property proven at the last Circuit trial by the only witnesses competent to value it—the mining engineers and other professional witnesses—and the fact that on the adjoining property there is being set up a plant to cost around ten million dollars (R. 153) for extracting alumina from this limestone will bring out to the Court that the defendant's claims were not fantastic, were not based on conditions which did not or could not exist, and the extent to which the subtlety of the plaintiff deceived him.

All of the constitutional questions now presented by either of the petitioners were duly set up in the State Courts. Any doubt about this is dispelled by the following statement appearing in the last opinion of the State Supreme Court:

> "One of the supposed issues presented is whether the constitutional questions raised, relating also to the Federal Constitution, have been preserved for possible review by the Supreme Court of the United States, if sought by appellants. Of course, our opinion is our own and does not bind that high Court, *but we think that such questions are sufficiently in the record for the purpose stated.*" (R. 425.) (Emphasis added.)

Reasons Relied On for the Allowance of the Writ

The reasons relied on for the issuance of said writ and upon which your petitioners believe that a writ ought to be issued, may be summarized as follows:

The state court has decided federal questions of substance not theretofore determined by this court, or has decided some of them in a way probably not in accord with

applicable decisions of this court; and has decided against certain rights and privileges specially set up or claimed by your petitioners under the Constitution of the United States, that is to say:

1. The statute and common law of South Carolina having provided the exclusive machinery for the barring of the dower of a mentally competent wife by her separate examination by and voluntarily renouncing her dower before an officer competent to administer an oath, it was a violation of the due process and equal protection of the laws clauses of the Fourteenth Amendment of the United States Constitution for the state courts to have barred such a dower by mere judicial decree in an action against the husband for specific performance of an alleged contract in which wife had not joined, and she having refused to give her consent to renounce the dower.

2. The action of the state courts in denying such wife the right to set up and prove fraud in the procurement of the alleged contract, which resulted in her dower right being taken away from her without her consent, was a taking of her property without due process of law and a denial to her of the equal protection of the laws in violation of the Fourteenth Amendment, Section 1, to the Constitution of the United States.

3. This suit was originally brought against the husband alone for specific performance. On his appeal from an adverse decree, the State Supreme Court remanded the case for further proceedings; wherein the Court said that its directing the wife to be made a party would perhaps give rise to an opportunity to defeat the decree by establishing a value for the property so far in excess of the proportionate part of the contract price as to deprive respondent of the benefit of its contract; and that in the further consideration

of the method of computing the value of the dower the appellant, the respondent and the appellant's wife each would be entitled to be fully heard. Pursuant to this an amended summons, requiring him to answer, was served upon the husband; to which he duly filed answer setting up defenses, but the Circuit Court then made an order without notice denying the husband any further status as a litigant. It was contended by him that this order denied him due process of law and the equal protection of the laws in violation of the 14th Amendment to the United States Constitution; and it is now contended that its affirmance does deny him such rights and privileges guaranteed by that Amendment.

4. In trying the matter of the value of this sub-strated deposit of limestone or marl, the issue was marked and definite as to the evidence offered by the respective sides. Plaintiff depended principally on lay witnesses, mostly farmers whose knowledge was limited to surface purposes, such as agriculture and timber; whereas the defendants relied on professional witnesses, such as mining engineers and scientists, who alone were competent. The valuation decided on ignored the latter, and set a figure that was so lacking in any fair or substantial support in the competent evidence and in authority and reason that its non-Federal nature will not prevent a review by this honorable Court, there being other Federal questions involved.

5. The State Court's action of ordering a part of the purchase price set aside as an indemnity against the dower claim of Sara McCoy and securing it with a mortgage providing that if she survives her husband, the money be paid to her; deprives her husband of his property without due process of law, because that money will not belong to her, but his estate, on account of the latter's liability under the general warranty in his deed.

6. The judgments rendered in this cause are illegal since the petitioners have thereby been deprived of due process of the law and the equal protection of the laws as guaranteed by the Fourteenth Amendment, Section 1, of the United States Constitution; because the honorable Supreme Court of South Carolina did not decide a vital point raised by the fourth exception on the first appeal in this case, that the main basis upon which fraud was claimed by the defendant was that

> "The plaintiff in procuring the option represented to the defendant that 'elbow room' was wanted inducing the defendant to believe that it was expanding plaintiff's large sawmill operation adjoining defendant's place, and beclouding and concealing from him the vital fact of the presence under the surface of the property of a large and highly valuable deposit of limestone or marl," etc.;

which point was made and definitely stated in the cause and fairly arose upon the record, but was not decided as required by Article V, Section 8, of the Constitution of South Carolina, and by Section 27 of its Code.

Your petitioners further state that said Supreme Court of South Carolina is the highest court in and of the State of South Carolina in which a decision in this suit could be had, and that its judgments involve Federal questions, the last of which being the final judgment on all of the matters herein referred to within the State of South Carolina; and these petitioners aver that these judgments are erroneous, and that this honorable Court should require the cause to be certified to it for review and determination.

Your petitioners fully amplify their grounds for requesting that a writ of certiorari be ordered herein in and by their brief, which is subjoined to this petition, reference to which is craved, and in which we will, we respectfully submit, demonstrate, upon valid authority and reason, the

grounds of Federal jurisdiction, and the right and necessity of this case being heard and adjudicated by the Supreme Court of the United States.

Your petitioners include in their brief copies of the constitutional and statutory provisions of the State of South Carolina which are referred to in the foregoing petition, and this honorable Court is requested to refer to the same whenever necessary, and that the same be deemed a part of this petition.

Your petitioners present herewith a certified copy of the entire record in this cause, including the proceedings in the Supreme Court of South Carolina, and the opinions of said court, and of the finality of its judgment; and state that the record below reposes in said court.

WHEREFORE your petitioners respectfully pray that a writ of certiorari be issued under the seal of this Court directed to the Supreme Court of the State of South Carolina, sitting at Columbia, S. C., commanding said court to certify and send to this Court, on a day to be designated, a full and complete transcript of the record and all proceedings of the said Supreme Court of South Carolina had in said cause, to the end that the cause may be reviewed and determined by this honorable Court as provided by law, and that said judgments of the Supreme Court of South Carolina may be reversed by this honorable Court, and for such further relief as may be proper.

And your petitioners will ever pray.

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